

Given my state employment experience in the Legislative Fiscal Division and the Governor's Office, I was somewhat surprised to hear the proponents' testimony on this bill in the Senate. Senators were told: **"This bill is about the BOARDS. Boards are abusing their power."** And, **"Boards are sanctioning members of unlicensed health care...putting them out of business."** I thought, what's going on here? The professional and public members I've worked with for so long cannot have changed that much in the last few years, can they? So I made it my business to research the facts prior to this hearing. I thank the Dept. of Labor and Industry Business Standards Division staff for providing the complaint statistics information.

**My conclusion is that SB 287 is based on a false premise about alleged actions of the boards.** There are about 98,000 professionals, under 98 license categories, licensed through 40 boards and programs in Montana. I have examined the data for the last seven years from January 1, 2002 through December 31, 2008. There were 8,599 complaints filed, or about 1,228 per year, against all licensees and against the thousands of uncounted unlicensed practitioners that proponents indicate are in 1,200 different professions combined. The electricians and plumbers, which have strong unions and organizations, account for the majority of board actions on these complaints.

Related to SB 287, there are 22 "Healthcare" Boards, which are shaded light gray on your handout, that received 3,959 complaints or about 566 per year. Of these, **only 262 complaints--about 37 each year--were against unlicensed practitioners.** And, after investigation, **there were ONLY 86 Cease and Desist letters or injunctions--about 12 per year--to unlicensed practitioners.** Over the last seven years, for example, the Alternative Health Care Board issued five letters and no injunctions, Barbers and Cosmetologists issued 19 Cease and Desist Letters and no injunctions, Chiropractors issued one letter and that went to an injunction, Clinical Lab Science Practitioners issued one letter and that went to an injunction, the Board of Medical Examiners issued 29 letters and two injunctions.

Let's be clear here. The proponents testify the bill is needed because they are being "sanctioned" and put out of business. **Sanctions** are used *only for professional licensees* in accordance with 37-1-312, MCA. Cease and desist letters may be sent to unlicensed practitioners under 37-1-317, MCA, which states in part that the department shall investigate complaints concerning practice by an unlicensed person. The healthcare boards are not going out seeking issues. They are required by law to investigate complaints and the data shows they really are examining the issues carefully, dismissing about 75% of all complaints that are made. Of the 262 unlicensed practice complaints investigated, cease and desist letters were sent to about 1/3, and injunctions were pursued only in egregious situations that required such action.

I've attached three examples of cease and desist letters. First, a letter to J C Nouveau from the Board of Alternative Health Care that accounts for two of the five cease and desist actions of that board. Next is a letter to Rainy Roth from the Board of Barbers & Cosmetologists regarding advertising to the public about services provided. Mountain Massage has a web site listing several pages of services, with a message attached to one massage item stating that the Dept. of Labor & Industry issued a cease and desist order for that service and the order is being appealed. Last is a letter to Dr. Michael Jenkins in Townsend, who was from Nevada and sanctioned throughout his entire residency, but managed to obtain a Michigan license to practice medicine, and then moved to Montana and began practicing unlicensed medicine here.

As I mentioned, over the last seven years the Board of Medical Examiners obtained only two injunctions, one from the District Court in Kalispell against an unlicensed practitioner who was using a black box to read symptoms, diagnosing cancer and other conditions, mixing "kitchen meds" to cure his patients, and accepting only cash payments.

In conclusion, the hundreds of professional and public members who serve on our licensing boards are committed first and foremost to ensuring Montana residents access safe professional and occupational services. Our state boards are not protecting their turf, they are protecting Montanans! They are not putting responsible unlicensed practitioners out of business, they are advising them about provisions of current law. You have heard considerable testimony today from unlicensed practitioners who have been working successfully in Montana for many, many years, thereby demonstrating this bill is not needed. Please, table SB 287.

**Professional and Occupational Licensing Complaint Statistics January 1, 2002 to December 31, 2008**

Boards	Total # of Complaints	Total # of Contested Cases (Licensees)	Total # Dismissed	Total # of Unlicensed Practice Complaints	Total Cease and Desist/Injunctions Issued (Unlicensed Practice)
Alternative Healthcare	48	9	34	20	5
Architects & Landscape Arch	83	6	64	50	13
Athletics Program	8	3	5	0	0
Athletic Trainers	0	0	0	0	0
Barbers & Cosmetologists	918	490	409	33	19
Boiler Operator Program	5	0	4	3	1
Chiropractors	118	26	91	9	1
Clinical Lab Science Practitioners	45	3	41	2	1
Construction Blaster Program	0	0	0	0	0
Crane Operator Program	9	1	8	0	0
Dentistry	275	30	244	10	1
Elevator Program	23	1	22	0	0
Fire Prevention Program	8	0	6	2	2
Funeral Services	68	17	47	4	4
Hearing Aid Dispensers	105	44	60	8	1
Landscape Architects	1	0	1	0	0
Licensed Addiction Counselors	51	16	35	2	0
Medical Examiners	963	121	811	68	31
Nursing	1213	466	730	41	17
Nursing Home Administrators	25	5	20	1	0
Occupational Therapy	13	3	10	0	0
Optometry	41	4	35	4	2
Outfitters	678	444	229	9	5
Pharmacy	349	106	241	15	2
Physical Therapy	58	1	57	4	0
Plumbers	414	126	184	177	104
Private Alt Adolescent Residential Pgm	0	0	0	0	0
Private Security	92	30	50	32	12
Professional Engineer & Land Surveyor	206	38	156	26	12
Psychologists	76	5	67	19	4
Public Accountants	136	37	88	21	11
Radiologic Technologist	34	6	28	5	0
Real Estate Appraisers	234	110	122	3	2
Realty Regulation	1227	598	619	32	10
Respiratory Care Practitioners	28	5	22	6	1
Sanitarians	4	0	4	0	0
Social Workers & Prof Counselors	214	53	158	17	3
Speech Language Path & Audiologists	14	2	12	0	0
Electrical	594	135	315	184	144
Veterinary Medicine	221	13	195	27	13
<b>Total for Division</b>	<b>8599</b>	<b>2954</b>	<b>5224</b>	<b>834</b>	<b>421</b>
<b>Total For Healthcare Boards</b>	<b>3959</b>	<b>935</b>	<b>2938</b>	<b>262</b>	<b>86</b>
<b>Total for Business &amp; Occup Boards</b>	<b>4640</b>	<b>2019</b>	<b>2286</b>	<b>572</b>	<b>335</b>



# Montana

## Department of Labor and Industry

### Office of Legal Services

DEPARTMENT OF LABOR & INDUSTRY

LICENSING

Governor Brian Schweitzer

PHONE: (406) 841-2300

FAX: (406) 841-2313

TDD: (406) 444-0532

APR 22 2007

P.O. BOX 200513

HELENA, MT 59620-0513

CHECK NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

April 20, 2007

JC Nouveau  
8120 W. Central  
Missoula MT 59801

Certificate No. 70060100000519460335

### CEASE AND DESIST ORDER

Dear Ms. Nouveau:

The Montana Board of Alternative Health Care (the Board) considered two complaints against you as well as enclosures provided by the complainants, i.e., copies of your advertising offering voluntary midwife services in the Missoula, Montana area. You are neither licensed as a direct entry midwife apprentice nor as a direct entry midwife in the State of Montana.

No person may practice direct entry midwifery in Montana unless licensed by the Board. §37-27-301, Mont. Code Ann. Nor may a person use the term or title of licensed midwife or direct entry midwife or derivations thereof to represent the person or his/her practice unless licensed by the Board. §37-27-212, Mont. Code Ann.

Accordingly, you are **HEREBY ORDERED TO CEASE AND DESIST** from providing or offering to provide midwifery services and from holding yourself out to the public as a midwife or as being able to provide midwifery services. The practice of direct-entry midwifery is the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. §37-27-103(7), Mont. Code Ann.

In the event the Board receives information that you violated this Cease and Desist Order, it may file a civil action in District Court to enjoin you from practicing midwifery or holding yourself out to the public as a midwife or holding your services out to the public as midwifery services, without first being licensed by the Board of Alternative Health Care. §§37-27-212(4) and 37-1-136 (3), Montana Code Annotated. Violation of a District Court injunction could result in a civil penalty of up to \$5,000. You are also advised that a person practicing a licensed profession or occupation in Montana without complying with licensing provisions, is guilty of a misdemeanor criminal offense punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation constitutes a separate offense. §37-1-317(3), Mont. Code Ann.

Please guide your actions accordingly in the future.

Chairman of the Board of Alternative Health Care

By: Lorraine A. Schneider  
Lorraine A. Schneider, Board Counsel



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P.O. BOX 200513  
HELENA, MT 59620-0513

January 31, 2008

TO: Rainy Roth  
Mountain Massage  
302 Missoula Avenue, Ste C  
Troy, MT 59935

Certificate No. 170070220 0001 0807 8455

#### ORDER TO CEASE AND DESIST

At its regularly scheduled meeting on Monday, January 28, 2008, the Montana State Board of Barbers & Cosmetologists reviewed a complaint brought against you by the Board of Barbers & Cosmetologists. The Board is providing this **Cease and Desist Order** in lieu of proceeding to District Court to file for an injunction. You, as the owner and operator of Mountain Massage, are alleged to have been advertising to the public that you and your business offer exfoliations, and that you perform such services although you do not have a license to do so. In addition, your website advertises that you offer spa parties involving nail technicians or estheticians. Pursuant to Section 37-31-302 of the Montana Code Annotated it is unlawful to operate a salon without first obtaining a license or a temporary operating permit.

Section 37-31-301 of the Montana Code Annotated states that it is unlawful to practice cosmetology or esthetics for compensation without an appropriate license. It is also unlawful under this section to practice cosmetology, esthetics, or manicuring other than in a licensed salon or shop as provided in this chapter. Section 37-31-334 states that the commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment of both fine and imprisonment. As a result of its review, the Board concluded that sufficient evidence exists to prove that you violated the above statutes.

**YOU ARE HEREBY ORDERED TO CEASE AND DESIST FROM PERFORMING ANY ESTHETICS OR COSMETOLOGY FUNCTIONS IN YOUR BUSINESS, OR HOLDING YOURSELF OUT AS AN ESTHETICIAN OR COSMETOLOGIST IN THE STATE OF MONTANA WITHOUT FIRST OBTAINING THE APPROPRIATE LICENSE FROM THE MONTANA BOARD OF BARBERS & COSMETOLOGISTS. YOU ARE FURTHER ORDERED TO CEASE AND DESIST FROM UTILIZING LICENSED MANICURISTS OR ESTHETICIANS IN YOUR BUSINESS WITHOUT FIRST OBTAINING A SALON LICENSE.**

**PLEASE TAKE NOTICE:** Should the Board receive evidence of any further infractions, it will proceed to District Court to file an injunctive action against you under § 37-1-136, MCA. It may also seek prosecution for a misdemeanor via the County Attorney's office under § 37-1-317, MCA. If convicted, this misdemeanor is punishable by a fine not less than \$250.00 or more than \$1,000.00, or by imprisonment in a county jail for not less than 90 days or more than one year, or both. Please guide your actions accordingly in the future.

Montana Board of Barbers & Cosmetologists  
Wendell Petersen, Chairperson

By: Anjeanette C. Lindle  
Anjeanette C. Lindle, Board Counsel

Rainy Roth-Complaint No. 2008-144-COS



# Montana

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HELENA, MT 59620-0513

#### MONTANA BOARD OF MEDICAL EXAMINERS

January 29, 2008

Michael R. Jenkins, D.O.  
26 Ray Creek Road  
Townsend, Montana 59644

#### CEASE AND DESIST ORDER

Dear Dr. Jenkins:

The Board of Medical Examiners recently reviewed material sent to it regarding your alleged unlicensed practice of medicine including examining patients in Montana and writing prescriptions for those Montana patients. A physician who is not licensed in Montana, but who is living in Montana and treating patients in Montana must be licensed in Montana in order to practice medicine here. You cannot use a Michigan license to practice medicine in Montana. The Board is therefore issuing this second Cease and Desist Order in lieu of proceeding to District Court to request an injunction ordering you to refrain from practicing medicine without a license.

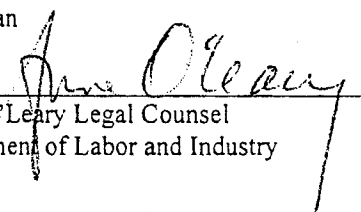
Section 37-3-102(6), Montana Code Annotated (MCA) defines the "practice of medicine" to mean "the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities."

Section 37-3-102(6), MCA, states "If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter."

**YOU ARE HEREBY ORDERED TO CEASE AND DESIST FROM PRACTICING MEDICINE WITHOUT A LICENSE.**

Again, should the Board be informed of any further infractions, it will proceed to District Court to file an injunctive action against you under §37-1-317, MCA. It may also seek prosecution for a misdemeanor via the County Attorney's office, as per 37-3-325 MCA. Therefore, please guide your actions accordingly in the future.

BOARD OF MEDICAL EXAMINERS  
Arthur Fink, D.O.  
Chairman

BY:   
Anne O'Leary Legal Counsel  
Department of Labor and Industry